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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/757,138	01/09/2001	Chad C. Smutney	P-1656	6406

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EXAMINER	
GHAFOORIAN, ROZ	
ART UNIT	PAPER NUMBER

3763

DATE MAILED: 01/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/757,138	SMUTNEY ET AL.
	Examiner Roz Ghafoorian	Art Unit 3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 06 November 2002.
- 2a) This action is FINAL.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,3,5-11 and 15-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,3, 5-11, 15-17 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 273
- 4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 1, 3, 5-11, 15-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claims 1 and 11 the applicant has recited the limitation of " a blunting component comprise a shuttle member and a tubular, non-perforated blunting probe mounted on the shuttle member, the blunting probe having a blunt tip and a rearward open end; " lines 5-7 in claim 1 and lines 4-7 in claim 11. it is not clear how a blunting probe can be non-perforated at the same time have a perforation (open end) at the rearward.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1, 3, 5-9, 12 and 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S Patent No.6391007 to Change et al

Change teaches a needle component comprising a housing 501 a needle cannula 502 mounted in the housing the needle cannula having a sharp tip where in the housing defines a fluid chamber 513 and an access port 509 for fluid flow there through; and a blunted component comprising a shuttle member 515 and a tubular non-perforated blunted probe 504 mounted on the shuttle member 515, the blunted probe having a blunt tip. The blunted probe is disposed within the needle cannula and the needle component and the blunted component are configuration for movement from a sharpened configuration to in a blunted configuration. The shuttle defines a non-perforating cavity within which the blunted probe is mounted. The shuttle member is perforated. The blunting component are configured for movement from a sharpened configuration to locking engagement in a blunted configuration; a locking sharpened configuration and an unlocked blunt configuration, the opposite of what the applicant has claimed.

Change does not teach a blunt probe with a rearward open end, however, Change does recognized the existed of hollow blunts and their importance because a hollow blunt allows for a flash chamber which allows the flash back to be seem as soon as possible so the care taker does not puncture the vein.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have combined these studies, because Change recognized the existed of hollow blunts and their importance because a hollow blunt (with an exit hole in the proximal location) allows for a flash chamber which allows the

flash back to be seen as soon as possible so the care taker does not puncture the vein.  
(Col.1, lines 25-35)

3. Claims 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6391007 to Change et al, and further in view of U.S Patent No. 6056726 to Isaacson.

As mentioned above Change teaches a needle component comprising a housing 501 a needle cannula 502 mounted in the housing the needle cannula having a sharp tip where in the housing defines a fluid chamber 513 and an access port 509 for fluid flow there through; and a blunted component comprising a shuttle member 515 and a blunted probe 504 mounted on the shuttle member 515, the blunted probe having a blunt tip. The blunted probe is disposed within the needle cannula and the needle component and the blunted component are configuration for movement from a sharpened configuration to in a blunted configuration. The shuttle defines a non-perforating cavity within which the blunted probe is mounted. The shuttle member is perforated. Change however, teaches a locking sharpened configuration and an unlocked blunt configuration, the opposite of what the applicant has claimed.

Change however, does not teach a flash chamber. Isaacson teaches a self-contained safety intravenous catheter insertion device with a flash chamber.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have combined these studies, because according to Isaacson portion within the rearward needle portion to permit the user to visualize blood

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entry into the needle and verify proper placement of the needle within a blood vessel.

(Col.6, lines 25-30)

***Response to Arguments***

4. Applicant's arguments filed 11-6-2002 have been fully considered but they are not persuasive.

a. The applicant alleges that Change teaches away from a hollow blunt probe because it uses a solid blunt probe instead, however that is incorrect Change recognized the important of both the hollow and solid bunt probes and improves upon the solid probe. Hence Change has thought away from the solid probe and not from the hollow probe.

b. The applicant alleges that Change recognizes a perforated probe which is not similar to the applicants probe, however the applicant claims the limitation of a non-perforated blunted probe with a rearward open end, well if the probe has a rearward open end it has a perforation and its not solid, therefore the claim is contradictory to itself.

***Conclusion***

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roz Ghafoorian whose telephone number is 703-305-2336. The examiner can normally be reached on 8:30am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 703-308-3552. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

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RG  
January 10, 2003

A handwritten signature consisting of the letters "RG" written in a cursive, flowing style.A handwritten signature in cursive ink that reads "Michael J. Hayes".

MICHAEL J. HAYES  
PRIMARY EXAMINER